

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 90-343-E - ORDER NO. 90-850 ✓
SEPTEMBER 12, 1990

IN RE: Pelzer Hydro Company, Inc.,)	
)	
Complainant)	ORDER
vs.)	GRANTING
)	MOTION FOR
Duke Power Company,)	SUMMARY
)	JUDGMENT
Respondent.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Complaint filed April 13, 1990, by Pelzer Hydro Company, Inc., (Pelzer) requesting that the Commission, pursuant to Commission Regulation 103.835, institute formal proceedings concerning the issue of Duke Power Company's (Duke's) alleged violation of certain Commission orders by refusing to negotiate in good faith with Pelzer with respect to long term rates. Pelzer requested that the Commission order Duke to make available for the Upper and Lower Pelzer Hydroelectric Projects on the Saluda River in Greenville and Anderson Counties of South Carolina, long term rates no less than those contained in the contract between Duke and Aquenergy Systems, Inc., Pelzer's sister corporation, for the five hydroelectric projects owned by Aquenergy Projects (Aquenergy).

On May 25, 1990, Duke answered the Complaint stating that Duke has negotiated in good faith, that there is no basis for the Complaint, and that the rates requested by Pelzer should not be granted because they exceed Duke's avoided cost. Duke also moved that the Complaint be dismissed.

On June 22, 1990, Pelzer filed a Motion for Summary Judgment seeking an Order directing Duke to make available for the Pelzer Projects the same rates and terms contained in the Purchased Power Agreements entered into on December 29, 1987, between Duke and Aquenergy Systems, Inc., for the five hydroelectric projects owned by Aquenergy.

Oral arguments on Duke's Motion to Dismiss and Pelzer's Motion for Summary Judgment were heard at 11:00 a.m., on Tuesday, August 14, 1990. Pelzer was represented at the hearing by Bradford W. Wyche; Duke by William Larry Porter and Jefferson D. Griffith; and the Commission Staff by Sarena D. Burch. Based on the evidence in the record, the Commission makes the following findings and conclusions:

1. Pelzer Hydro Company, Inc. is the owner and operator of the Upper and Lower Pelzer Hydroelectric Projects on the Saluda River in Greenville and Anderson Counties, South Carolina.

2. Aquenergy Systems, Inc. is the owner and operator of the following five hydroelectric projects in South Carolina:

- a. Apache Hydroelectric Project -- South Tyger River, Spartanburg County (400 kilowatts);

- b. Piedmont Hydroelectric Project __ Saluda River, Greenville and Anderson Counties (1 megawatt);

c. Woodside I Hydroelectric Project -- Twelve Mile River, Pickens County (400 kilowatts);

d. Woodside II Hydroelectric Project -- Twelve Mile River, Pickens County (440 kilowatts); and

e. Ware Shoals Hydroelectric Project -- Saluda River, Greenwood and Laurens Counties (6 megawatts).

3. The Aquenergy Projects and the Pelzer Projects are "qualifying facilities" (QF's) within the meaning of the Public Utility Regulatory Policies Act of 1978 (PURPA). Consequently, Duke Power is obliged to purchase all of the electric power produced by these projects.

4. On December 29, 1987, Aquenergy and Duke entered into long-term Purchased Power Agreements for all of the Aquenergy Projects. At the time these agreements were executed, the approved avoided cost rate for Duke was 1.17 cents per kilowatt hour for on-peak capacity, and 3.13 cents and 2.32 cents per kilowatt hour for on-peak and off-peak energy, respectively.

5. On April 1, 1989, Aquenergy entered into a contract to acquire the Pelzer Projects from Gerber Childrenswear, Inc. for the sum of \$2.5 million. By Order No. 89-1130 (Dec. 18, 1989), the Commission reaffirmed its support for the development of small hydroelectric power facilities in South Carolina:

In prior orders entered in the PURPA Docket (No. 80-251-E), the Commission has announced its support for the development of small power facilities in South Carolina. This case involves projects which were constructed prior to the turn of the century and have long provided a source of clean and reliable energy to the public. The Projects should be encouraged to continue operations and the Commission is satisfied that the payment of

full avoided cost rates is essential for this to occur. The Commission concludes that the Upper and Lower Pelzer Projects are entitled to rates based upon full avoided cost, including capacity payments..." (Order No. 89-1130) at p. 4.

6. Having been assigned Aquenergy's rights under the purchase agreement with Gerber Childrenswear, Inc., Pelzer acquired the Pelzer Projects on January 4, 1990.

7. The avoided capacity cost figure used by the Commission in its Order No. 89-1130 to determine whether or not the Pelzer Projects would be economical was the avoided capacity cost figure submitted to the Commission by Duke and approved by the Commission as Schedule PP(SC). This figure has remained unchanged since 1985 despite Duke's argument that its avoided cost today is less than it was when the Aquenergy contracts were signed.

8. This avoided cost rate can be lowered upon the Commission's determination that a lower rate is just and reasonable to the electric consumer and in the the public interest, does not discriminate against the QF, and is sufficient to encourage cogeneration and small power production, pursuant to PURPA regulations 292.304 (a) and 292.304 (b)(3).

9. Under the avoided cost rate offers made to Pelzer by Duke in this Docket, Pelzer could suffer either a negative cash flow in every year of the contract, or in every year until 1999.

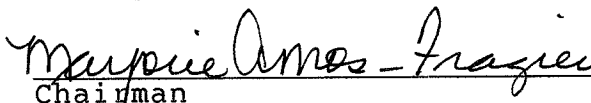
10. The Commission concludes, based on the above findings, that Duke should extend to the Pelzer Projects the same rates contained in the Aquenergy contracts in order for these projects to have an opportunity to be financially viable. The Pelzer Projects

are entitled to rates based on full avoided cost, including capacity payments, and such rates are to be effective with power supplied and bills rendered on and after the date of this Order.

IT IS THEREFORE ORDERED:

1. The motion to dismiss of Duke Power Company is denied.
2. The motion of Pelzer Hydro Company, Inc. for summary judgment is granted.
3. Duke shall enter into a long-term contract with Pelzer effective from and after the date of this Order, for the purchase and sale of electrical power from the Pelzer Projects, which contract shall include the same rates contained in the Aquenergy contracts. The other terms and conditions of this long-term contract shall be substantially the same as those contained in the Aquenergy contracts, with modifications allowed to reflect information specific to the Pelzer Projects.
4. That the request of Pelzer for attorney's fees and costs is denied.
5. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director
(SEAL)